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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/733,166 12/08/00 COMPANS

R 96-99

023713  
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HM22/0913

EXAMINER

ILLB  
ART UNIT PAPER NUMBER

1648

DATE MAILED:

09/13/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/733,166

Applicant(s)

COMPANS ET AL.

Examiner

Bao Qun Li

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-61 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20 and 44-61, drawn to a method for inducing an immune response with viral hemagglutinin, classified in class 424, subclass 93.3.
- II. Claims 21-43, drawn to an immunogenic composition comprising a sialic acid binding component, classified in 424, subclass 184.1.

If any one of Groups I-II is elected, applicants are required to further elect one kind of target antigen to be examined on the merit. This is not a species election since each target antigen encodes structurally different protein and produces different effect.

The target antigen should be selected:

- (1). An antigen is from bacterial pathogen cell (claim 11 or 30 or 53),
- (2). An antigen is from a tumor cell (claim 15, or 29 or 43 or 56),
- (3). An antigen is from virus (claims 17-19, or 26-28 or 40-42 or 58-60).

If Group (1) is elected, applicants are required to further elect a single bacterial pathogen to be examined on the merit. This is not a species election since each target antigen encodes structurally different protein and produces different effects.

The bacterial pathogen should be selected from:

- (a). *Neisseria meningitidis* (claim 13 or 32 or claim 55),
- (b). *Escherichia coli* (claim 14, or 33 or 55).

If Group (3) is elected, applicants are required to further elect a single virus to be examined on the merit. This is not a species election since each target virus encodes structurally different protein and produces different biological effect.

The viral pathogen should be selected from:

- (i). HIV,
- (ii). SIV,
- (iii). Feline immunodeficiency virus,
- (iv). Bovine immunodeficiency virus,
- (v). Rabies virus,
- (vi). Measles,

- (vii). VSV,
- (viii). Flavivirus,
- (ix). Alphavirus,
- (x). Herpes Virus.

If Group (vii) is elected, applicants are required to further elect a single virus to be examined on the merit. This is not a species election since virus has different molecular structure, which encodes different antigen and different immune response.

The virus should be selected from:

- A. Dengue virus,
- B. Yellow fever virus,
- C. St. Louis encephalitis virus,
- D. Japanes virus,
- E. Murry Valley encephalitis virus,
- F. West Nile virus,
- G. Rocio virus,
- H. Tick-bond encephalitis virus,
- I. Omsk hemorrhagic fever virus.
- J. Kyasanur forest disease virus,
- K. Pawassan virus

If Group (ix) is elected, applicants are required to further elect a single virus to be examined on the merit. This is not a species election since each virus has different molecular structure, which encodes different protein and produces different effects.

The virus should be selected from:

- A1. Sindbis virus,
- B1 Semliki forest virus,
- C1. Venezuelan equine encephalitis virus,
- D1. Eastern equine encephalitis virus,
- E1. Western equine encephalitis virus,
- F1. Ross River virus,

- G1. Mayaro virus,
- H1. O'nyong-nyong virus,
- I1. Chikungunya virus.

The inventions are distinct, each from the other because:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another material different product, e.g. A recombinant DNA vaccine encoding multi-antigen.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Qun Li whose telephone number is 703-305-1695. The examiner can normally be reached on 8:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Bao Qun Li

September 4, 2001

  
JAMES HOUSEL 9/10/01  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600